

AMENDED IN ASSEMBLY MARCH 9, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 11**

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**Introduced by Assembly Member De Leon**  
**(Coauthors: Assembly Members Beall, Carter, and Hill Eng, Evans,**  
**Hill, Jones, Lieu, and Salas)**  
**(Coauthor: Senator DeSaulnier)**

December 1, 2008

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An act relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as amended, De Leon. Corporate reorganization: built-in losses.

The Corporation Tax Law, in specified conformity to federal income tax laws, imposes certain limitations on the use of built-in losses in conjunction with corporate reorganizations.

This bill would clarify that a specified federal administrative notice relating to those limitations does not apply for purposes of California law.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) The Personal Income Tax Law (Part 10 (commencing with
- 4 Section 17001) of Division 2 of the Revenue and Taxation Code)
- 5 and the Corporation Tax Law (Part 11 (commencing with Section

1 23001) of Division 2 of the Revenue and Taxation Code) provide  
2 for specified conformity to various referenced provisions of the  
3 federal Internal Revenue Code, as enacted as of a specified date.

4 (2) Those laws provide that for taxable years beginning on or  
5 after January 1, 2005, the conformity date specified in California  
6 law for those referenced Internal Revenue Code sections is January  
7 1, 2005, except as otherwise specifically provided.

8 (3) Included among the federal provisions conformed to as  
9 enacted as of January 1, 2005, are the provisions of Section 382  
10 of the Internal Revenue Code, relating to limitations on net  
11 operating loss carryforwards and certain built-in losses following  
12 ownership change.

13 (4) As enacted as of January 1, 2005, Section 382 of the Internal  
14 Revenue Code applied to financial institutions.

15 (5) On October 20, 2008, the Internal Revenue Service issued  
16 Notice 2008-83, 2008-42 I.R.B. 905, stating that “for purposes of  
17 section 382(h), any deduction properly allowed after an ownership  
18 change (as defined in section 382(g)) to a bank with respect to  
19 losses on loans ~~for~~ or bad debts (including any deduction for a  
20 reasonable addition to a reserve for bad debts) shall not be treated  
21 as a built-in loss or a deduction that is attributable to periods before  
22 the change date.”

23 (6) Notice 2008-83, which precludes the application of  
24 provisions of Section 382 of the Internal Revenue Code to financial  
25 institutions, constitutes a substantive change to Section 382 of the  
26 Internal Revenue Code, as enacted as of January 1, 2005.

27 (7) This state conformed to Section 382 of the Internal Revenue  
28 Code, as enacted as of January 1, 2005, but has not conformed to  
29 any changes to Section 382 of the Internal Revenue Code set forth  
30 in Notice 2008-83.

31 (8) *On February 17, 2009, President Barack Obama signed the*  
32 *American Recovery and Reinvestment Act of 2009 (Public Law*  
33 *111-5), which in part asserts that Internal Revenue Service Notice*  
34 *2008-83 is inconsistent with the congressional intent in enacting*  
35 *Section 382 of the Internal Revenue Code. While questioning the*  
36 *legal authority of Notice 2008-83, Congress grandfathered in*  
37 *transactions that occurred after the Notice was issued and on or*  
38 *before January 16, 2009, in order to protect the reliability of*  
39 *guidance letters generally, and avoid punishing taxpayers that*  
40 *rely on this guidance.*

1     (9) *California should not conform to the construction of Section*  
2     *382 of the Internal Revenue Code as described in Notice 2008-83*  
3     *inasmuch as the legality of that construction has been questioned*  
4     *in federal statute.*

5     (b) Inasmuch as this state has not conformed to the changes set  
6     forth in Notice 2008–83 or otherwise modified the application of  
7     Section 382 of the Internal Revenue Code for purposes of state  
8     income and corporation tax laws, the Franchise Tax Board is  
9     directed not to apply the provisions of Notice 2008–83 for purposes  
10    of the Personal Income Tax Law or the Corporation Tax Law.